

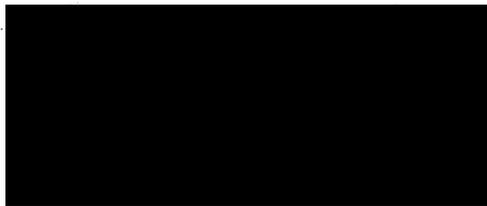
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U.S. Citizenship  
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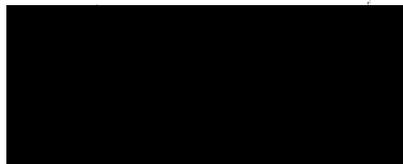
Petitioner:

Beneficiary:



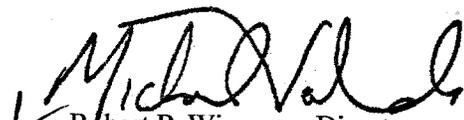
PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a distributor of French-made frames and glasses. It seeks to employ the beneficiary as a sales director. As required by statute, the petition was accompanied by certification from the Department of Labor (DOL). The director denied the petition because he determined that the petitioner failed to demonstrate that the beneficiary had the required educational credentials as stated on the approved labor certification. The director concluded that the petitioner had not established that the beneficiary was eligible for the visa classification sought.

On appeal, counsel asserts that the beneficiary has the necessary educational credentials to meet the qualifications set forth in the approved labor certification.

Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), provides employment based visa classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's filing date. The filing date of the petition is the initial receipt in the Department of Labor's employment service system. See 8 C.F.R. 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). In this case, that date is February 2, 2001.

To determine whether a beneficiary is eligible for an employment-based immigrant visa as set forth above, Citizenship and Immigration Services (CIS) must examine whether the alien's credentials meet the requirements set forth in the labor certification. The Application for Alien Employment Certification Form ETA-750A, items 14 and 15 set forth the minimum education, training, and experience that an applicant must have for the position of a sales director. In the instant case, item 14 requires four years of college culminating in a Bachelor of Arts or Bachelor of Science degree in any field of study. Item 15 designates other special requirements. In this case it states; "French language; French accounting systems; experience in fashion business."

As evidence of the beneficiary's formal education, the petitioner initially submitted a copy of an "Evaluation of Work Experience," dated September 25, 1998, from [REDACTED] of the Columbia Business School. Professor Holbrook states that, based on his review of another education evaluation by [REDACTED] of Education International and a "self-reported job description," it can be concluded that, as a result of the combination of formal education and job experience, the alien beneficiary possesses the equivalent of a Bachelor of Arts degree in business with a concentration in marketing.

On December 10, 2002, the director requested additional evidence from the petitioner establishing that the beneficiary has the required baccalaureate degree as of the priority date of February 2, 2001. The director also instructed the petitioner to provide a copy of the beneficiary's college transcript.

In response, counsel for the petitioner resubmitted a copy of Professor Holbrook's evaluation, as well as a copy of an advanced technical specialist degree from the Academy of Rouen, France and an English translation of the grade transcript related to the Rouen degree, but no copy of the original grade transcript. According to the academic evaluation, dated July 28, 1998, from Joel B. Slocum of Education International, the beneficiary's formal education represents that he has the equivalent of "at least an Associate's (two-year

degree, specializing in marketing, at an accredited institution in the United States.

The director denied the petition on August 22, 2003. The director found that the evidence submitted did not meet the requirements of the approved labor certification because the beneficiary does not possess a U.S. Bachelor of Science or Arts degree or an equivalent foreign degree.

On appeal, the counsel resubmits a copy of [REDACTED] valuation. Counsel asserts that the Department of Labor approved the labor certification on the basis that the petitioner had met all conditions. Counsel maintains that the education evaluations support the conclusion that the beneficiary's credentials are sufficient to establish that he has the combined formal education and experience to qualify for visa classification as either a "professional" under 203(b)(3)(A)(ii) of the Act or as a "skilled worker" under 203(b)(3)(A)(i) of the Act.

Counsel's contention is not persuasive. The AAO notes that the Department of Labor's function in determining whether the hiring of an alien for a certified position will adversely affect the wages and working conditions of similarly employed domestic U.S. workers does not impact the jurisdiction of CIS to review whether a petitioner is making a realistic job offer by evaluating the qualifications of a beneficiary for the job. CIS is empowered to make a de novo determination of whether the alien beneficiary is qualified to fill the certified job and receive entitlement to third preference status. *See Tongatapu Woodcraft Hawaii, Ltd. v. INS*, 736 F.2d 1305, 1308 (9<sup>th</sup> Cir. 1984).

In evaluating the beneficiary's qualifications, CIS reviews the job offer portion of the labor certification to determine the required qualifications for the position. CIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Dragon Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986).

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) also provides in pertinent part:

If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study. To show that the alien is member of the professions, the petitioner must submit evidence showing that the minimum of a baccalaureate degree is required for an entry into the occupation.

We find that "an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration or study" is applicable to what constitutes evidence of a degree. Because neither the Act nor the regulations indicate that a bachelor's degree must be a United States bachelor's degree, CIS will recognize a foreign equivalent bachelor's degree to a United States baccalaureate. The above regulation uses the singular description of a foreign equivalent degree. Thus, the plain meaning of the regulatory language sets forth the requirement that, when the visa classification sought is that of a professional, a beneficiary must produce one degree that is determined to be foreign equivalent of a U.S. baccalaureate degree in order to be qualified for third preference visa category purposes. Even if viewed as a petition for a skilled worker, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B) provides that the evidence must show that the alien has the education, training or experience, and any other requirements of the individual labor certification. Here, the Form ETA 750A requires a bachelor

degree and four (4) years of education. As stated above CIS examines the job offer portion of the labor certification to determine the required qualifications for the position. It is also noted that a bachelor's degree is generally found to require four (4) years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977). Therefore, the combination of education and experience may not be accepted in lieu of a four-year degree.

The AAO concurs with the director's conclusion and rejects the suggestion that a combination of the beneficiary's academic studies at the Rouen Academy and his work experience satisfies the terms of the labor certification in requiring four years of college culminating in a baccalaureate degree. A labor certification clearly distinguishes between academic requirements, training, and experience in the job offered. Counsel's assertion that the formula of equating three years of work experience to one year of education should be applied here is misplaced. That equivalence specifically applies to non-immigrant H1B petitions, not to immigrant petitions.

Counsel cites two 1994 cases in support of his assertion that a combination of education and experience can be considered to be the equivalent of a baccalaureate degree. The facts of those cases are not before the AAO in the instant matter. Moreover, they are not considered binding precedents within the regulation(s) at 8 C.F.R. § 103.3(c) and 8 C.F.R. § 103.9(a), which provide that decisions designated as precedent decisions must published in bound volumes or as interim decisions.

In this case, the approved labor certification explicitly states that the proffered position requires a Bachelor of Arts or Science degree, not a combination of experience and academic studies, which could be considered the equivalent of a bachelor's degree. This labor certification does not define or accept any equivalency less than a bachelor's degree.

Based on the evidence submitted, the AAO concurs with the director that the petitioner has not established that the beneficiary possesses the requisite baccalaureate degree as required by the terms of the labor certification. Therefore, the beneficiary is not eligible for the visa classification sought.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.